



# City of Carmel

## **Carmel Advisory Board of Zoning Appeals Regular Meeting Monday, June 28, 2004**

The regularly scheduled meeting of the Carmel Board of Zoning Appeals met at 7:00 PM on Monday, June 28, 2004 in the Council Chambers of City Hall, Carmel, Indiana. The meeting opened with the Pledge of Allegiance.

Members in attendance were Leo Dierckman, Jim Hawkins, Earlene Plavchak, Madeleine Torres, and Charles Weinkauff, thereby establishing a quorum.

The Department of Community Services was represented by Jon Dobosiewicz, Angie Butler and Mike Hollibaugh. John Molitor, Legal Counsel was also in attendance.

Mr. Dierckman moved to approve the minutes as submitted from the May 24, 2004 meeting. The motion was seconded by Mrs. Torres and **APPROVED 5-0.**

Mr. Dobosiewicz gave the Department Report. He stated that there were two Items on the agenda that he was going to ask the Board to take action on at this time. After some discussion with the petitioner and the adjacent neighborhood, the Department is requesting that Item 4h, Martin Marietta Materials – Mueller Property South be moved to a special meeting on August 11, 2004. Item 12h, A Decision Concerning the Existence of a Nonconforming Use, has been withdrawn by the Department.

Mr. Hollibaugh spoke regarding the withdrawal of Item 12h. After a meeting on June 22 with Tom Yedlick, a representative from Kingswood and representatives from Martin Marietta, it was decided the Board does not have jurisdiction to make a decision on the four issues. The Zoning Ordinance does not line up with the State Statute. Because of the seriousness of the issue, they felt like they wouldn't put the burden on the Board to make that decision that could be challenged because of its validity. The Director will make a decision based on the evidence and then let the chips fall. At this point they do not know if the Director's determination will be challenged.

Mrs. Plavchak moved to hear Item 4h at a special meeting on Wednesday, August 11, 2004 at 7:00 PM in the Council Chambers. The motion was seconded by Mr. Dierckman and **APPROVED 5-0.**

Mr. Molitor gave the Legal Report. He stated that at the last meeting, one of the agenda items was denied by a 3 to 2 vote and the 3 members who voted against that item incorporated various findings. As the staff has reviewed those findings, they have found it necessary to discuss with one of the members whether he wished to concur with the findings made by the others and they have had a confirmation of that. However, because of the difficulty in reconciling this, he and the staff would like authority to work on some adjustments to the Rules of Procedure, whereby this may be avoided in the future, as well as any uncertainty for petitioners and remonstrators.

Mr. Dobosiewicz also stated that Item 9h Charter One Bank @ Kroger has been tabled to the July 26 meeting.

#### **H. Public Hearing.**

##### **1h. TABLED: Briarwood, lot 12: Cosmas Residence**

~~The applicant seeks approval to encroach into the 50 ft platted building setback.~~

~~**Docket No. 04040019 V** Chapter 26.02.19.D platted building setback line~~

~~The site is located at 5048 Beechtree Cir. and is zoned S-1/Residence Low Density.~~

~~Filed by Adam DeHart of Keeler Webb Associates.~~

##### **2-3h. Warren and Phelps Addition, lot 16 pt - Optical Office**

The applicant seeks the following development standards variances:

**Docket No. 04040021 V** Chapter 23D.03.B.8.a front building setback

**Docket No. 04040022 V** Chapter 23D.03.B.12.b no parking on site

The site is located at 30 1st Street SW. The site is zoned B-2/Business within the Old Town Overlay, Main Street Sub-area.

Filed by James Shinaver of Nelson & Frankenberger for Leechco Properties, LLC.

Present for the Petitioner: Jim Shinaver. Also present were Brad Subrin from Leechco Properties, the architect Jeff Sipe, and Drs. McClain and Lauth, the opticians within this office. The doctors' office is currently located at 1344 S. Range Line Road. They are hoping to relocate their offices to the Leechco property when their current lease expires. An aerial photo and a photo of the current building were shared. Leechco has purchased the real estate and the building and desires to renovate and remodel the building to a more attractive updated building. Leechco and its architects have met with staff and Les Olds, Director of the Carmel Redevelopment Commission to obtain their input and suggestions regarding the proposed building design. The proposed renovations and elevations were shown. Leechco received unanimous approval of its amended ADLS application from the Plan Commission's Special Study Committee. However, to actually construct this building, they need two variances. The Old Town Overlay now governs the development of this site. The Overlay requires the building to be located on or directly adjacent to the front property line. There is currently a parking strip between the front property line and the building. Leechco has agreed to dedicate the front parking area to the City as additional right-of-way for a future road project for 1<sup>st</sup> Street SW. This will allow the building to be closer to the front property line, but it will not be on the front property line or directly adjacent to it because of the existing sidewalk. After the right-of-way dedication, there will be no parking on the site. However, the City's public parking will have spots directly in front of the building and there is other street parking along adjacent roadways. A revised site plan after the right-of-way dedication was shown with the City's proposed parking spaces.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared.

Mr. Dobosiewicz gave the Department Report. He had one correction to the written Department Report. The sign variances have been withdrawn and signs modified to meet the ordinance requirements. Significant time was spent with the petitioner to come up with a plan that would accommodate the City's future proposal for on-street parking. The Department is recommending favorable consideration subject to two conditions. One would be that road right-of-way is dedicated,

per the road improvement plan; and second that there is a written agreement to dedicate additional road right-of-way up to the face of the building, at the request of the City, in the future, if needed for the future road project.

Mr. Shinaver stated the petitioner was agreeable to the conditions.

Public Hearing was closed.

Mr. Hawkins moved to approve with conditions **Docket No. 04040021 V, Warren and Phelps Addition, lot 16 pt - Optical Office.** The motion was seconded by Mr. Dierckman and **APPROVED 5-0.**

Mr. Dierckman moved to approve **Docket No. 04040022 V, Warren and Phelps Addition, lot 16 pt - Optical Office.** The motion was seconded by Mr. Hawkins and **APPROVED 5-0.**

**4h. Martin Marietta Materials - Mueller Property South**

The petitioner seeks special use approval for a sand and gravel extraction operation.

**Docket No. 04040024 SU** Chapter 5.02.02 special use in the S-1 zone

The site is located at the southwest corner of the intersection of East 106<sup>th</sup> Street and Hazel Dell Parkway. The site is zoned S-1/Residence - Low Density.

Filed by John Tiberi of Martin Marietta Materials, Inc.

**5h. Orin Jessup Land Co, Sec 2, pt lots 238-241 - Matthews Auto Repair**

The applicant seeks the following development standards variances:

**Docket No. 04040049 V** Chapter 23E Home Place Overlay Requirements

The site is located at 725 E 106<sup>th</sup> St. and is zoned B-2/Business within the Home Place Business District Overlay. Filed by E. Davis Coots for Matthews Auto Repair.

Present for the Petitioner: Dave Coots, 255 E. Carmel Drive. Also present were Dan and Jan Matthews. Dan has operated an auto repair business in the community for 25 years and 725 E. 106<sup>th</sup> Street is the present location. Hamilton County is in the process of widening the intersection of College and 106<sup>th</sup> Street from two lanes to five lanes in each direction. As a result, the County has taken right-of-way from Matthews property such that there will no longer be an entrance off of 106<sup>th</sup> Street into the overhead doors that front the north side of the building. That entry and parking have moved to the east side of the building. In order to replace the number of work bays that the present facility has, they are seeking to add a 1500 square feet addition to the south end of the building. A site plan was shown. The west elevation will have two overhead doors. The east elevation that opens to the parking lot will have five bays. The present north elevation doors will be replaced with windows and landscaping. After meeting with the Department, the multiplicity of variances needed from the Home Place Overlay produced a filing fee in excess of \$2900.00. It was decided to present a development plan that varied the entire Home Place Overlay with all improvements and additions. They had included the suggestions made by the Department. The addition will match the existing facility. Landscaping, parking, signage and sidewalks will be improved. There will be two lights on the building. Without these improvements, the business will lose access to more than half the work areas in the building for car repair. The May TAC issues were resolved today with the information received from the County

Highway Department. The drainage will be resolved with onsite concrete drainage within the parking area.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared.

Mr. Dobosiewicz gave the Department Report. Tonight's report varies from the written report. Information was received from the Highway Department and the Surveyor's Office. Had it not been for the road condemnation from the Highway Department, this business would not be before the Board this evening. There are expectations and high standards set forth by the Home Place Overlay Zone. The Department is put in a position to recommend favorable approval with the listed conditions. The real issue for the Board to deliberate is the fact that the petitioner would not be in front of them this evening. They weren't prepared to come forward and say that they wanted to expand their business. They are coming forward to say that they need to respond to the project in front of them and that they do not have the resources to comply with all of the high expectations that are set forth under the Home Place Business District. They have worked with the Department to meet the issues. The conditions are: 1) no storage of vehicles, other than those being actively serviced; 2) final building façade and sign approval by the Department; and 3) provision for dumpster enclosure with fence painted to match building.

Mr. Coots stated that the petitioner would be willing to meet the conditions.

Mr. Weinkauff stated that personally he felt that this was an unfair financial burden placed on the petitioner to file variances as well as reconstruct the building, because of the road condemnation.

Mr. Dierckman concurred with Mr. Weinkauff's statement.

The Public Hearing was closed.

Mr. Dierckman moved to approve with conditions **Docket No. 04040049 V, Orin Jessup Land Co, Sec 2, pt lots 238-241 - Matthews Auto Repair**. The motion was seconded by Mr. Hawkins and **APPROVED 5-0**.

**6-7h. Gelov Residence - Accessory Structure**

The applicant seeks the following development standards variances:

**Docket No. 04050019 V** Ch. 25.01.01.A.4(a) Accessory Bldg built before Principal Bldg

**Docket No. 04050020 V** Ch. 25.01.01.B.3(i) Accessory Bldg in front of Principal Bldg

The site is located at 2290 West 136th Street. The site is zoned S-1/Residence- Estate. Filed by Barry Smith of SLW, Inc.

Present for the Petitioner: Ted and Angela Gelov, as well as Barry Smith of Smith, Lake & Waters. A site plan was shown. The site is 8.5 acres. The primary structure will be centered on the property and built 350 feet from 136<sup>th</sup> Street. The secondary structure is an existing house located 175 feet from 136<sup>th</sup> Street. Modifications to the existing structure will allow for coordinated work progression and

prevents additional disruption of the site after the completion of the primary residence. The existing structure will be used as a pool house with a pool behind it.

Public in favor:

Tony Papay, 2030 W. 136<sup>th</sup> Street. This was the first he had seen the plans. He thought it would be a wonderful addition. He questioned the location of the barn.

Mr. Gelov pointed out the barn further back on the property.

No one appeared in opposition.

Mr. Dobosiewicz gave the Department Report. The site is well planned and the Department gave favorable consideration. They asked that a definite timetable be set for the primary structure.

Mr. Gelov stated that they intend to apply for permits within the next nine months. The projected date of completion would be within 24 months of issuance of the permits.

Mr. Hawkins asked if there was any intention to rent this accessory building.

Mr. Gelov stated that it was for their personal use.

The Public Hearing was closed.

Mr. Dierckman moved to approve **Docket No. 04050019, Gelov Residence – Accessory Structure** with the condition that the primary structure be completed within 24 months of permit issuance. The motion was seconded by Mr. Hawkins and **APPROVED 5-0**.

Mr. Dierckman moved to approve **Docket No. 04050020, Gelov Residence – Accessory Structure**. The motion was seconded by Mrs. Torres and **APPROVED 5-0**.

**8h. WITHDRAWN: Carmel/Clay Schools – Clay Middle School: Special Use Amendment**

~~Petitioner seeks approval to place 2 modular classrooms on site.~~

~~**Docket No. 04050024 SUA** Chapter 5.02 special use in the S-1 zone~~

~~The site is located at 5150 E 126th St. The site is zoned S-1/Residence Low Density.~~

~~Filed by Michael Schipp of Fanning/Howey for Carmel Clay Schools.~~

**9h. TABLED Charter One Bank @ Kroger**

~~The applicant seeks the following development standards variance:~~

~~**Docket No. 04050025 V** Chapter 25.07.02-08(b) number of signs~~

~~The site is located at 1217 S Range Line Rd. The site is zoned B-8/Business.~~

~~Filed by Erica Brenner of SignArt, Inc for Charter One Bank.~~

**10h. Stanford Park, Sec 3 - Amenity Area**

Petitioner seeks special use approval for an amenity area.

**Docket No. 04050026 SU** Chapter 10.02.A special use

The site is located northeast of 131st Street and Shelborne Road.

The site is zoned R-4/Residence.

Filed by Ed Flemming of Stoeppelwerth & Associates for Platinum Properties, LLC.

Present for the Petitioner: Doug Elmore, Platinum Properties. The project was originally called Burlingame. This amenity area is for three football fields and a concession stand for use by the Carmel Dad's Club. The plan has not changed. The parking lot has been reconfigured a little bit to accommodate drainage and move the water. The brick and the shingles will match the townhomes that flank the ball fields.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared.

Mr. Dobosiewicz gave the Department Report. The Department is recommending favorable consideration with the following conditions: 1) sidewalk to street at entrance to townhomes; 2) sidewalk between parking and fields to complete loop; 3) goals, scoreboards, and grandstands out only during football season.

The petitioner agreed to the conditions. He also stated that the fields would not be lit.

Mr. Weinkauff feels these open fields will be used for practice by area soccer teams.

Mr. Hawkins asked about the number of parking spaces for these three fields.

Mr. Dobosiewicz stated that they are providing in excess of what the ordinance requires.

The Public Hearing was closed.

Mr. Dierckman moved to approve with conditions **Docket No. 04050026, Stanford Park, Sec 3 – Amenity Area**. The motion was seconded by Mrs. Plavchak and **APPROVED 5-0**.

**11h. Cherry Creek Estates, Sec 1A, lot 4 - Sales Trailer**

The applicant seeks use variance approval for a sales trailer.

**Docket No. 04050027 UV** Chapter 5.01 permitted uses

The site is located at 5882 Cherry Creek Blvd. The site is zoned S-1/Residence - Low Intensity. Filed by Nicole Perry of Pulte Homes of Indiana, LLC.

Present for the Petitioner: David M. Compton, Vice President Land Acquisition for Pulte Homes, and Nicole Perry, Manager of Entitlements for Pulte Homes. They are requesting to extend the time period to maintain a sales trailer to a maximum of two years, to help facilitate the expedient build-out of Cherry Creek Estates. Pictures of the sales trailer were shown. The hours are 11:00 AM to 6:00 PM, seven days a week with eight parking spaces out front.

Mr. Weinkauff asked if this trailer was already in existence.

Mr. Compton stated that it is already present.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared.

Mr. Dobosiewicz gave the Department Report. The Department allows a dual use construction/sales trailer until which time the builder gets a Certificate of Occupancy on existing homes, which Cherry Creek Estates has received recently. At that time they are to discontinue the use of the sales trailer. It is allowed to remain there as a construction office at the discretion of the petitioner. There are not standards in the Ordinance, which regulate this type of use. They feel the petitioner's presentation; site plan and facility begin to define a standard, which the Department may consider in the future by amending the Ordinance. The Department recommended favorable consideration.

The Public Hearing was closed.

Mr. Dierckman moved to approve **Docket No. 04050027, Cherry Creek Estates, Sec 1A, lot 4 – Sales Trailer**. The motion was seconded by Mr. Hawkins and **APPROVED 5-0**.

**12h. ~~WITHDRAWN: A Decision Concerning the Existence of a Nonconforming Use~~**

~~The applicant seeks a decision concerning the existence of nonconforming uses on certain properties owned and/or controlled by Martin Marietta Materials, Inc.~~

~~**Docket No. 04060001 A** — Chapter 28.06 — nonconforming uses~~

~~The sites are located north of 96<sup>th</sup> Street and west of Hazel Dell Parkway and/or north of 106<sup>th</sup> St. and west of Hazel Dell Pkwy. The site is zoned S-1/Residence — Low Intensity.~~

~~Filed by Michael Hollibaugh, Director of the Carmel Dpt. of Community Services.~~

**I. Old Business.**

There was no Old Business.

**J. New Business.**

There was no New Business.

**K. Adjourn.**

Mrs. Torres moved to adjourn. The motion was seconded by Mrs. Plavchak and **APPROVED 5-0**.

The meeting was adjourned at 8:20 PM.

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Charles Weinkauff, President

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Connie Tingley, Secretary

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